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November 29, 2011

**VIA FACSIMILE (212-805-7990)**

The Honorable James L. Cott  
United States Magistrate Judge  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 1360  
New York, NY 10007

USDC SDNY  
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Re: *Lantheus Medical Imaging, Inc. v. Zurich American Ins. Co.,*  
No. 10 Civ. 9371 (LTS) (JLC)

Dear Judge Cott:

On behalf of Amicus Curiae Atomic Energy of Canada Limited (“AECL”), we submit this letter in response to the November 21, 2011 letter from Plaintiff Lantheus Medical Imaging, Inc. (“Lantheus”), regarding what Lantheus describes as “new information” relating to its pending Motion for Issuance of Amended Letters Rogatory (Doc. No. 35). As an initial matter, AECL objects to Lantheus’s November 21st submission and respectfully asks the Court to disregard its contents, including the attachment thereto, as it is inadmissible hearsay. See Federal Rules of Evidence 801, 802.

To the extent the Court nevertheless considers the merits of Lantheus’s submission, AECL submits in response the attached letter from AECL’s Access to Information and Privacy Director to the Office of the Information Commissioner of Canada. As set forth in that letter, based upon the steps AECL has taken to date and its complaint resolution action plan, AECL has confirmed that the Office of the Information Commissioner considers it appropriate for AECL to extend to February 2, 2012 its deadline for responding to Lantheus’s pending information request. See Letter from J. Boulais to G. Ranger (Nov. 28, 2011) (copy attached).

Moreover, the representations in Lantheus’s November 21, 2011 submission regarding matters of Canadian procedural law likewise are inaccurate. Pursuant to the Access to Information Act (the “Act”), the Information Commissioner has the power to investigate complaints regarding a request for access under the Act and, where he finds the complaint is well-founded, to make recommendations to the head of the governmental institution involved to take any action the Commissioner deems appropriate. See Access to Information Act, R.S.C.

BEVERIDGE & DIAMOND, PC

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1985, ch. A-1, § 37 (1985) (Can.). Additionally, if the complainant is dissatisfied with the Commissioner's recommendations or the government institution's response, the complainant may seek judicial review before the Federal Court of Canada of the government institution's refusal to provide access to a record. *Id.* at § 41.

AECL respectfully requests that the Court direct the Clerk to make this submission and attachment part of the record on Lantheus's motion.

Respectfully submitted,



Daniel M. Krainin  
*Counsel for Atomic Energy Canada Limited*

cc: Rukesh A. Korde, Esq. (via e-mail)  
Philip Silverberg, Esq. (via e-mail)



**EACL**  
Énergie atomique  
du Canada limitée

**Jean Boulais**  
Director, Access to Information and Privacy  
Directeur, Accès à l'information et de la  
protection des renseignements personnels

November 28, 2011

The Information Commissioner of Canada  
Place de Ville, Tower B  
112 Kent Street, 7<sup>th</sup> Floor  
Ottawa, ON K1A 1H3

Attn: Ghyslain Ranger

Re: *Access to Information Act Complaint*  
File #: 321100512

Dear Mr. Ranger:

We are now in receipt of the November 15, 2011 letter to you from Mr. Richard McCluskey, counsel to Lantheus Medical Imaging, Inc. ("Lantheus"), the complainant in this matter.

We write to correct a number of inaccuracies in Mr. McCluskey's letter, and to confirm our understanding that, in fact, Atomic Energy of Canada Limited ("AECL") remains in compliance with its obligations pursuant to the *Access to Information Act*, R.S.C., 1985, c. A-1 (the "Act") in relation to the Access to Information Request made by Lantheus on April 11, 2011.

I confirm that we met with you on November 15, 2011, where you confirmed the appropriateness of AECL's deadline extension to February 2, 2012. We advised you at that meeting of the steps that had been taken by AECL to date in complying with Lantheus' request, the reasoning behind the need for the extension, and that we were on target to meet the February 2, 2012 self-imposed deadline. As requested, on November 21, 2011 (prior to having been aware of Mr. McCluskey's correspondence), we provided you with our complaint resolution action plan and a final commitment date of February 2, 2012 to respond to Lantheus' request.

I invite you to contact me at your convenience should you require further information or clarification.

Yours truly,

Jean Boulais

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